

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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UNITED STATES OF AMERICA : CRIMINAL NO. 11-585-1  
:   
v. : Philadelphia, Pennsylvania  
: July 18, 2012  
WILLIAM BRIAN SUMMERS : 9:05 o'clock a.m.  
. . . . .

CHANGE OF PLEA HEARING  
BEFORE THE HONORABLE TIMOTHY R. RICE  
UNITED STATES MAGISTRATE JUDGE

- - -

APPEARANCES:

For the Government: ASHLEY K. LUNKENHEIMER, ESQUIRE  
U.S. Attorney's Office  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106

For the Defendant: ALAN J. TAUBER, ESQUIRE  
Lindy & Tauber  
1800 John F. Kennedy Boulevard  
Suite 1500  
Philadelphia, PA 19103

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Audio Operator: Sharon A. Hall

Transcribed by: Tracey J. Williams, CET

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48 W. LaCrosse Avenue  
Lansdowne, PA 19050  
(610) 623-4178

1 (The following occurred in open court at 9:05  
2 o'clock a.m.):)

3 THE COURT: Please be seated. Good morning,  
4 everyone.

5 ALL: Good morning, your Honor.

6 THE COURT: Ms. Lunkenheimer, Mr. Tauber.

7 MR. TAUBER: Thank you for accommodating us on short  
8 notice.

9 THE COURT: Of course. Mr. Summers, good morning.

10 THE DEFENDANT: Good morning. How are you doing,  
11 Judge?

12 THE COURT: I'm doing good, thank you.

13 The first order of business, Mr. Summers, I notice  
14 you've executed a consent to have me handle your case. Do  
15 you understand you could have Judge Jones do it, if you  
16 prefer?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay, all right. So I'll place that on  
19 the docket.

20 Ms. Hall, could you swear Mr. Summers, please?

21 Could you please stand, sir?

22 THE AUDIO OPERATOR: Please raise your right hand  
23 and state your name for the record.

24 THE DEFENDANT: William B. Summers.

25 WILLIAM BRIAN SUMMERS, Sworn.

1 THE AUDIO OPERATOR: Thank you.

2 THE COURT: All right. You can be seated, sir.

3 Sir, you're now under oath and any answer you give  
4 must be truthful and, if you answer falsely, it could be used  
5 against you in a prosecution for making a false statement or  
6 perjury.

7 THE DEFENDANT: Okay, yes.

8 THE COURT: All right. What I'm going to do, sir,  
9 is I'm going to ask you a series of questions to determine if  
10 you really want to plead guilty and if you're doing so of  
11 your own free will and you understand all the rights you're  
12 giving up. All right? So what I'm going to ask you to do is  
13 just sit there and listen. If you don't understand something  
14 I ask you, you can ask me to explain it more or you can ask  
15 to speak privately with your attorney, Mr. Tauber, and you  
16 can get clarification.

17 THE DEFENDANT: Okay.

18 THE COURT: So I want you to take your time and make  
19 sure you fully understand everything that's happening. Okay?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Could you state your full  
22 name and your age, please?

23 THE DEFENDANT: William B. Summers, age 53.

24 THE COURT: All right. And can you read, write and  
25 speak English?

1 THE DEFENDANT: Yes.

2 THE COURT: All right. And how far did you go in  
3 school?

4 THE DEFENDANT: High school graduate.

5 THE COURT: All right, excellent. Have you ever had  
6 or been treated for any drug or alcohol addiction or mental  
7 illness?

8 THE DEFENDANT: Mental illness.

9 THE COURT: Okay, tell me about that.

10 THE DEFENDANT: I've been hospitalized seven times  
11 for schizo-affective disorder.

12 THE COURT: Okay.

13 THE DEFENDANT: I hear voices.

14 THE COURT: All right. Are you being -- are you on  
15 any medication right now?

16 THE DEFENDANT: Yes.

17 THE COURT: Tell me about that.

18 THE DEFENDANT: I'm on Prozac, Welbutrin -- I have  
19 depression also -- I'm on Haloperidol, but I don't think the  
20 Haloperidol works.

21 THE COURT: Okay.

22 THE DEFENDANT: I don't --

23 THE COURT: Does the medicine affect your ability to  
24 understand what's going on?

25 THE DEFENDANT: I hear voices, but I understand.

1 Like I'm hearing voices now.

2 THE COURT: Oh, you are?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay.

5 THE DEFENDANT: But I understand.

6 THE COURT: Do you want to do this another day?

7 THE DEFENDANT: No, I'm fine.

8 THE COURT: Do you understand who I am?

9 THE DEFENDANT: Yes.

10 THE COURT: Who am I?

11 THE DEFENDANT: Judge Rice.

12 THE COURT: Okay. And what's my role? What's my  
13 function in this process?

14 THE DEFENDANT: To mediate between the Judge and the  
15 Government and --

16 THE COURT: Well, okay. Actually, my role here is  
17 to determine whether you're competent and willing to plead  
18 guilty to these offenses, because this is a serious matter.  
19 You scheduled a hearing to admit that you did the criminal  
20 conduct the Government alleges.

21 THE DEFENDANT: Right.

22 THE COURT: All right? And then, if you plead  
23 guilty, then I'll have to impose a sentence on you.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Do you understand who Mr.

1 Tauber is and who Ms. Lunkenheimer is?

2 THE DEFENDANT: Yes.

3 THE COURT: Who are they?

4 THE DEFENDANT: Alan is my lawyer and she's the  
5 attorney, District Attorney.

6 THE COURT: Okay, very good. Now, do you want to do  
7 this another day when you're not hearing voices?

8 THE DEFENDANT: No, I'm fine.

9 THE COURT: Tell me about the voices you're hearing.

10 THE DEFENDANT: They tell me to hurt myself.

11 THE COURT: Okay. And do you have a -- do you have  
12 an interest in doing that?

13 THE DEFENDANT: No, I don't -- not at the moment,  
14 no.

15 THE COURT: Okay. Do you want to consult with your  
16 doctor about that before you make this decision?

17 THE DEFENDANT: No, I'm fine.

18 THE COURT: All right. Do you have any drug or  
19 alcohol addiction?

20 THE DEFENDANT: No.

21 THE COURT: Okay. Mr. Tauber, do you have any views  
22 on your client's competence to enter a guilty plea?

23 MR. TAUBER: No, your Honor. I understand the  
24 issues with respect to his mental illness, I do not think  
25 they impact on his competency to understand the proceedings

1 or the charges or what is happening with respect to the  
2 prosecution. I think these issues that he's dealing with, I  
3 believe they're independent of his ability to understand and  
4 comprehend what is happening around him. So I think -- I  
5 think he's competent to proceed.

6 THE COURT: All right. Ms. Lunkenheimer?

7 MS. LUNKENHEIMER: Well, that's -- I have not had a  
8 lot of interaction with Mr. Summers, but my understanding  
9 from Mr. Tauber has been that he -- and the reason we're so  
10 sort of late to this particular game in terms of pleading  
11 guilty before the other hearing is that Mr. Tauber and Mr.  
12 Lindy, I understand, were really exploring whether Mr.  
13 Summers was appropriate for some sort of mental health-  
14 diversion situation, and they ultimately determined that his  
15 mental competency really didn't impact on his ability to  
16 understand the proceedings and right from wrong and all the  
17 things necessary to proceed here. That's my understanding; I  
18 have no personal knowledge of that, but that is why it did  
19 take us so long to get before you. And so it's my  
20 understanding from Mr. Tauber that he did not determine that  
21 Mr. Summers could not understand or proceed today despite  
22 very serious and I think long-term mental health issues.

23 THE COURT: Okay. Do you feel as though you're  
24 getting the proper treatment and medication that you need to  
25 deal with your tendencies to hurt yourself?

1           THE DEFENDANT: Well, I used to see when I was  
2 working, I used to see a better psychiatrist, now I'm forced  
3 to go to like a clinic and he don't spend enough time with  
4 me. I'm in and out of there in like five or ten minutes.

5           THE COURT: Well, would it be helpful if I arranged  
6 with Pretrial Services to have you placed in some type of  
7 treatment program through the court?

8           THE DEFENDANT: What do you mean, like a psych unit?

9           THE COURT: Not necessarily. I would leave it to  
10 Pretrial Services to talk to a medical professional and find  
11 out what the appropriate treatment or help that you need is  
12 because, if you need more help than you're getting now, I'll  
13 try to help you get it.

14          MR. TAUBER: I think what the Judge is saying is  
15 that Pretrial Services might be able to find you better care  
16 than you're getting.

17          THE DEFENDANT: Right, yeah.

18          MR. TAUBER: And the Judge is offering to assist you  
19 in that.

20          THE DEFENDANT: Would I have to pay for it?

21          THE COURT: No --

22          THE DEFENDANT: No.

23          THE COURT: -- the court would pay for it. You're  
24 court-appointed, right, Mr. Tauber?

25          MR. TAUBER: Yes, yes.



1           THE COURT: Yeah, I believe the court would pay for  
2 that.

3           THE DEFENDANT: Mm-hmm.

4           THE COURT: Is that something you want me to explore  
5 with Pretrial?

6           THE DEFENDANT: Yes, sir. Thank you.

7           THE COURT: All right. I'm going to order that  
8 Pretrial Services evaluate you for possible mental health  
9 treatment, counseling, in addition to what you're receiving  
10 now at the clinic.

11          THE DEFENDANT: Right, okay.

12          THE COURT: Okay? Now, are you prepared to proceed  
13 today and enter a guilty plea?

14          THE DEFENDANT: Yes, sir.

15          THE COURT: Okay. Because, when you enter a guilty  
16 plea, you're admitting that you committed a crime and you  
17 can't change your mind.

18          THE DEFENDANT: Right.

19          THE COURT: And you want to do that?

20          THE DEFENDANT: Yes, sir.

21          THE COURT: Okay.

22          MR. TAUBER: Your Honor, just so -- just -- I have  
23 not seen Pretrial's report to you, but Mr. Summers has had a  
24 number of hospitalizations over the last year and I know that  
25 Pretrial has followed that, because I often learned about it

1 from a call from Pretrial. So I know that they're -- they  
2 have some familiarity with Mr. Summers' issues and his care,  
3 so it will not be -- it will not come as a big surprise and  
4 they may already, you know, have done some of the -- you  
5 know, have some of the knowledge and information in order to  
6 do that.

7 THE COURT: I mean, they gave him a glowing report.  
8 they said he's fully compliant in -- according to Mr. Patsay  
9 (ph.), who's your therapist?

10 THE DEFENDANT: Yes.

11 THE COURT: That you're in compliance with the  
12 treatment plan and they tell me that he's doing very well.

13 MR. TAUBER: I think he has been for quite a while.  
14 I think early on when this case first happened he had a  
15 hospitalization and there may have been a subsequent one.

16 THE COURT: Okay.

17 THE DEFENDANT: I had two of them, yes.

18 THE COURT: Okay. Well, I'm going to order them to  
19 get you some additional help. And what I'd urge you to do,  
20 if you sense that you're running into problems, either with  
21 hearing voices or with any type of tendency to hurt yourself,  
22 contact Pretrial or contact Mr. Tauber and we'll get you some  
23 immediate help.

24 THE DEFENDANT: Okay.

25 THE COURT: Because I don't want anything bad to

1 happen to you.

2 THE DEFENDANT: Yes. I usually get to the crisis  
3 center --

4 THE COURT: Okay.

5 THE DEFENDANT: -- and they admit me into the  
6 hospital for like ten days.

7 THE COURT: Okay.

8 THE DEFENDANT: Would that be something --

9 THE COURT: Do you feel like you want to be  
10 admitted?

11 THE DEFENDANT: No, not at the present moment.

12 THE COURT: Okay.

13 MR. TAUBER: Your Honor, he is -- Mr. Summers is  
14 married and his wife follows and monitors the situation very  
15 carefully as well.

16 THE COURT: Okay.

17 MR. TAUBER: So he's not on his own out there.

18 THE COURT: Okay, very good.

19 Can you hear and understand me okay today?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Are any of the voices that you said  
22 you've been hearing, does that affect your ability to  
23 understand what I'm talking to you about?

24 THE DEFENDANT: No.

25 THE COURT: Okay. Now, has Mr. Tauber gone over all

1 the charges against you and fully explained your trial rights  
2 and all the defenses you could bring to those charges?

3 THE DEFENDANT: Yes.

4 THE COURT: Now, are you voluntarily agreeing to  
5 plead guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Have you had enough time to  
8 talk to Mr. Tauber about it?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And has he done everything that you  
11 wanted him to do on your case?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, I understand you're pleading  
14 without a plea agreement. So you're pleading guilty and  
15 there's no promises from the Government as to anything in  
16 this case.

17 THE DEFENDANT: Right.

18 THE COURT: Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. Other than that, did anybody  
21 promise you anything to get you to plead guilty?

22 THE DEFENDANT: No.

23 THE COURT: Do you understand that no one can  
24 guarantee what your sentence will be?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Did anyone use force, violence or  
2 threats to get you to plead guilty?

3 THE DEFENDANT: No, sir.

4 THE COURT: Are you pleading guilty because it's  
5 your own free will?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Did anyone tell you to say -- tell you  
8 what to say here today --

9 THE DEFENDANT: No.

10 THE COURT: -- or put words in your mouth?

11 THE DEFENDANT: No.

12 THE COURT: Do you understand that if you're not a  
13 U.S. citizen that a guilty plea could subject you to  
14 deportation?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Have you ever been on any  
17 court supervision before, such as probation, parole or --

18 THE DEFENDANT: No.

19 THE COURT: -- ARD or anything like that?

20 THE DEFENDANT: No.

21 THE COURT: Okay. Do you have any prior criminal  
22 convictions?

23 THE DEFENDANT: No.

24 THE COURT: All right. So are you going to be  
25 filing a motion also, Mr. Tauber?

1 MR. TAUBER: Yes, we will, your Honor.

2 THE COURT: Under 3607?

3 MR. TAUBER: Yes, sir.

4 THE COURT: Do you know about the hearing on Monday?

5 MR. TAUBER: I do and I unfortunately have a  
6 conflict, and I know that there is at least one other  
7 attorney who will not be attending. I have not -- it was my  
8 intention to receive the notes from the prior hearing, I know  
9 there's been a hearing already. I believe that whatever  
10 questions I would have will be covered by the counsel who was  
11 there and if there's not -- and if there's something other  
12 than that -- I'm going to get the notes and review them and  
13 if there's additional testimony, which I really think it  
14 would be unlikely, I will discuss it with Ms. Lunkenheimer  
15 and we'll have to work out some arrangement either to get the  
16 information or --

17 THE COURT: Okay.

18 MR. TAUBER: -- to recall the witness for a brief  
19 period of time, but I don't anticipate that to be an issue.

20 THE COURT: Okay.

21 MS. LUNKENHEIMER: And we obviously won't be  
22 proceeding on any specific evidence relating to William  
23 Summers at the hearing on Monday.

24 THE COURT: Okay, very good.

25 Now, it's my understanding that the maximum

1 penalties here, Mr. Tauber, are -- for attempted possession  
2 of Oxycodone -- one year in prison, one year of supervised  
3 release, a \$1,000 fine and a \$100 special assessment. And if  
4 you're placed on supervised release, if supervision is  
5 revoked, the original term of imprisonment may be increased  
6 by up to one year. Thus, a violation of supervised release  
7 increases the possible period of conviction and makes it  
8 possible that you could serve your original sentence plus an  
9 additional period without credit for the time already spent.  
10 So you could end up for -- the maximum is a year in jail, but  
11 if you violate a condition of supervised release it could be  
12 more.

13 THE DEFENDANT: Mm-hmm.

14 THE COURT: Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Do you understand this  
17 offense is covered by what's called the Sentencing Guidelines  
18 and I'm required to consider those Guidelines at sentencing,  
19 but I may depart from them under certain circumstances?

20 (Pause.)

21 THE COURT: Do you want to talk to Mr. Tauber about  
22 that for a minute?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay, go ahead.

25 (Discussion held off the record.)

1 THE DEFENDANT: Right, okay.

2 THE COURT: Okay?

3 THE DEFENDANT: I understand.

4 THE COURT: So I'm going to be -- the Guidelines are  
5 just a set of kind of rules that help me decide what your  
6 possible sentencing range should be --

7 THE DEFENDANT: Mm-hmm.

8 THE COURT: -- and then I can either go up or down  
9 from that depending on what factors I learn about your case.

10 THE DEFENDANT: Okay.

11 THE COURT: So a Probation Officer is going to  
12 prepare what's called a presentence report and, if you  
13 disagree with the findings of that report, you can raise  
14 objections to Mr. Tauber --

15 THE DEFENDANT: Right.

16 THE COURT: -- and then I'll have to rule on those  
17 objections. The Government could also make objections. But  
18 if you disagree with my rulings on it, on your objections,  
19 the guilty plea still remains.

20 THE DEFENDANT: Okay.

21 THE COURT: So that doesn't mean you can change your  
22 mind and then have a trial.

23 THE DEFENDANT: Right, okay.

24 THE COURT: Because right now, as you sit here, you  
25 could have a trial on this case.



1 THE DEFENDANT: Mm-hmm.

2 THE COURT: Okay?

3 THE DEFENDANT: Okay.

4 THE COURT: Now, also I wanted to talk to you about  
5 your job. I don't know what effect, if any, a guilty plea  
6 will have on your ability to get your job back at Boeing.

7 THE DEFENDANT: Mm-hmm.

8 THE COURT: So there is a possibility that, by  
9 pleading guilty, it could impede your ability to get your job  
10 back. Do you understand that? Why don't you talk to Mr.  
11 Tauber about that.

12 (Discussion held off the record.)

13 THE DEFENDANT: All right, I understand.

14 THE COURT: Okay?

15 THE DEFENDANT: Yes.

16 THE COURT: So you're hoping to get your job back at  
17 Boeing?

18 THE DEFENDANT: I was, yes.

19 THE COURT: Okay. Now, pleading guilty, I don't  
20 know what effect it's going to have, but I wanted you to know  
21 that there is a chance that somebody at Boeing could say  
22 because he pled guilty and admitted this that we're not going  
23 to take him back.

24 THE DEFENDANT: Mm-hmm.

25 THE COURT: I don't know whether that's the case or

1 not, but I want you to know that it's a possibility.

2 THE DEFENDANT: Okay.

3 THE COURT: Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you still want to plead guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Do you understand that you can  
8 appeal your sentence to a higher court, which could modify or  
9 set aside the sentence or order me to resentence you --

10 THE DEFENDANT: Right.

11 THE COURT: -- do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And the Government, if I give you a  
14 sentence the Government doesn't like, the Government could  
15 also appeal. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. And there's certain  
18 constitutional rights that I want to go over with you that  
19 you're giving up by pleading guilty. The first one is,  
20 you're presumed innocent. As you sit here now, I presume  
21 that you're innocent of these charges and you're only guilty  
22 if the Government proves you guilty beyond a reasonable  
23 doubt. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And, by pleading guilty, you're giving

1 up that presumption of innocence in admitting your guilt?

2 THE DEFENDANT: Right.

3 THE COURT: Okay. You have a right to the  
4 assistance of a lawyer at every stage of the proceeding,  
5 including trial -- before trial, during trial, after trial  
6 for an appeals to higher courts. And if you can't afford a  
7 lawyer, as we did here, the Government will appoint a lawyer  
8 to represent you.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Do you understand you have a  
11 right to plead not guilty and persist in that plea and have  
12 your case tried by a jury of 12 or by a judge?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand you have a right to a  
15 jury of your peers drawn from the residents of this district  
16 and that you would get help on who to select to sit on that  
17 jury, Mr. Tauber would give you assistance on that?

18 THE DEFENDANT: Okay.

19 THE COURT: Do you understand that in order to find  
20 you guilty a jury would have to be unanimous, that is all 12  
21 jurors would have to find that Ms. Lunkenheimer has proven  
22 your guilt beyond a reasonable doubt --

23 THE DEFENDANT: Mm-hmm.

24 THE COURT: -- which is the highest standard in the  
25 law?

1           You could obtain a subpoena or a court order to make  
2 witnesses come to court to testify on your behalf. Do you  
3 understand that?

4           THE DEFENDANT: Yes, sir.

5           THE COURT: Do you understand, if you're found  
6 guilty, you could appeal the finding of guilt to a higher  
7 court, which could set aside or modify the finding of guilt  
8 or give you a new trial?

9           THE DEFENDANT: Yes, sir.

10          THE COURT: Do you understand that at a trial you  
11 would have the right to confront and cross-examine your  
12 accusers? That is, you'd get to sit in this courtroom and  
13 have Mr. Tauber question their accuracy of the offense that  
14 they claim they perceived and undermine their credibility --

15          THE DEFENDANT: Yes, sir.

16          THE COURT: -- in front of a jury and you've given  
17 up that right.

18          Do you understand that at a trial you wouldn't have  
19 to testify?

20          THE DEFENDANT: Yes, sir.

21          THE COURT: That is, the Government can't force you  
22 to testify if you don't want to and that, if you did refuse  
23 to testify, Ms. Lunkenheimer could not comment on that in  
24 front of the jury or ask them to make an adverse inference  
25 from that.

1           THE DEFENDANT: Yes, sir.

2           THE COURT: All right. Do you understand that by  
3 entering a guilty plea today there's going to be no trial and  
4 you're giving up all the rights that I just told you about by  
5 admitting that you're guilty?

6           THE DEFENDANT: Yes, sir.

7           THE COURT: Now, in order to prove you guilty beyond  
8 a reasonable doubt, the Government would have to prove two  
9 things. First, they would have to prove that you intended to  
10 commit the crime of illegally possessing a controlled  
11 substance, in this case a mixture or substance containing a  
12 detectable amount of Oxycodone; and that thereafter you did  
13 some act constituting a substantial step toward the  
14 commission of that crime which strongly corroborates your  
15 criminal intent.

16           THE DEFENDANT: Mm-hmm.

17           THE COURT: Those are the two things they'd have to  
18 prove to convict you.

19           THE DEFENDANT: Okay.

20           THE COURT: Okay?

21           THE DEFENDANT: Mm-hmm.

22           THE COURT: Now, what I'm going to ask Ms.  
23 Lunkenheimer to do now is to summarize the evidence they  
24 would introduce against you. Now, I want you to listen very  
25 carefully to be sure that you did everything that she says

1     you did.

2                 THE DEFENDANT:   Okay.

3                 THE COURT:   Because if you didn't, I need you to  
4     tell me --

5                 THE DEFENDANT:   Okay.

6                 THE COURT:   -- because you shouldn't plead guilty if  
7     you didn't do what she says.

8                 THE DEFENDANT:   Okay.

9                 THE COURT:   Okay?

10                THE DEFENDANT:   Yes, sir.

11                MS. LUNKENHEIMER:  If this case were to proceed to  
12     trial, the Government would introduce evidence through  
13     witnesses and documentary exhibits which would establish the  
14     following:  That on September 26th, 2011 the Defendant met  
15     with an individual cooperating with the Government inside of  
16     a building on the Boeing Company's Ridley Park, Pennsylvania  
17     campus, that campus being in the Eastern District of  
18     Pennsylvania.  There the Defendant bought three placebo  
19     Oxycontin 40 milligram tablets from the cooperating source  
20     for \$60.

21                THE COURT:   Okay.  Mr. Summers, is that -- did you  
22     do that?

23                THE DEFENDANT:   Yes, I did.

24                THE COURT:   Okay.  Do you have any disagreement with  
25     anything Ms. Lunkenheimer said?

1 THE DEFENDANT: No.

2 THE COURT: Okay. Did you understand her clearly?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. No voices in your head were  
5 confusing you?

6 THE DEFENDANT: Uh, no, I understood her.

7 THE COURT: Why do you hesitate?

8 THE DEFENDANT: Well, the voices are -- they're  
9 pretty loud, but I understood what she said.

10 THE COURT: Okay. Are the voices at all affecting,  
11 you know, your ability to really think clearly and decide  
12 whether you want to plead guilty?

13 THE DEFENDANT: No, I don't think so, no.

14 THE COURT: Okay. All right. Do you want me to  
15 have her repeat it again?

16 THE DEFENDANT: Yes, please.

17 THE COURT: All right. Why don't you do that, Ms.  
18 Lunkenheimer?

19 MS. LUNKENHEIMER: On September 26th, 2011 --

20 THE COURT: Do you understand that, that's the date?

21 THE DEFENDANT: Yes.

22 MS. LUNKENHEIMER: -- the Defendant, meaning you --

23 THE DEFENDANT: Mm-hmm.

24 MS. LUNKENHEIMER: -- met with somebody who was  
25 working with the Government at the Boeing Company's plant.

1 And inside one of the buildings on the plant, the person  
2 working with the Government sold to you three placebo  
3 Oxycontin 40 milligram tablets --

4 THE DEFENDANT: Right.

5 MS. LUNKENHEIMER: -- pills.

6 THE COURT: Do you know what placebo means?

7 MS. LUNKENHEIMER: Placebo meaning that they weren't  
8 actually Oxycontin.

9 THE DEFENDANT: Mm-hmm.

10 MS. LUNKENHEIMER: They looked like it --

11 THE DEFENDANT: Yeah.

12 MS. LUNKENHEIMER: -- they were pretending to be it,  
13 but they were missing the active ingredient, which is in this  
14 case Oxycodone.

15 THE DEFENDANT: Right, okay.

16 MS. LUNKENHEIMER: Okay? And that you paid \$60 for  
17 those placebo tablets.

18 THE DEFENDANT: Yes.

19 MS. LUNKENHEIMER: You didn't, obviously, know they  
20 were placebo at the time.

21 THE DEFENDANT: Right.

22 THE COURT: Okay. So you bought three pills from  
23 somebody in the Boeing plant and gave him \$60?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And he told you they were Oxycontin when



1 in reality they weren't?

2 THE DEFENDANT: Right.

3 THE COURT: Do you remember doing that?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Okay. And do you remember paying the  
6 \$60?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, why did you want to buy the  
9 Oxycodone?

10 (Pause.)

11 THE DEFENDANT: I used to use that to quiet my  
12 voices. I used to self-medicate myself.

13 THE COURT: Okay. All right. So that's why you did  
14 it?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Do you have any disagreement with  
17 the Government's proof?

18 THE DEFENDANT: No, I don't.

19 THE COURT: Okay. All right. Now, do you want to  
20 now plead guilty?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. Why don't you stand and I'll take  
23 your guilty plea?

24 THE AUDIO OPERATOR: William Brian Summers, you have  
25 been charged in an information, Criminal Number 11-585, in

1 violation of 21 U.S.C. Section 846, that is attempted  
2 possession of Oxycontin; how do you plead, guilty or not  
3 guilty?

4 THE DEFENDANT: Guilty.

5 THE AUDIO OPERATOR: Thank you.

6 THE COURT: All right, sir, thank you. I'm going to  
7 accept your guilty plea -- you can be seated, I'm sorry. I'm  
8 going to find that you're fully alert, competent and capable  
9 of entering an informed plea. I'm satisfied, despite our  
10 conversation about the voices and your medication, that you  
11 understand what's going on today and you're voluntarily and  
12 knowingly entering a plea. I find that your plea is  
13 supported by an independent basis in fact containing each of  
14 the essential elements of the offenses pled to. And your  
15 plea of guilty is therefore accepted and you are now adjudged  
16 guilty of the offense charged in the information.

17 Now, I'm going to ask the Probation Office to  
18 prepare a presentence report. You're going to be required to  
19 give some information to the Probation Officer to help me get  
20 a better picture of you and your life.

21 THE DEFENDANT: Right, okay.

22 THE COURT: And Mr. Tauber will help you with that  
23 process, all right? He'll sit down with you when you meet  
24 with the Probation Officer and kind of guide you through  
25 that.

1 THE DEFENDANT: Okay.

2 THE COURT: Okay? Now, after the Probation Officer  
3 does his report, both Mr. Tauber and Ms. Lunkenheimer will  
4 have the chance to file objections to it. So Mr. Tauber will  
5 go over it with you, he'll go over it line-by-line and  
6 explain to you what's in there. If you disagree with  
7 something, you can object to the Probation Officer and, if  
8 you don't get it worked out, you can file objections with me.

9 THE DEFENDANT: Okay.

10 THE COURT: And then I'll rule on them, but your  
11 guilty plea is going to remain even if you don't like my  
12 ruling.

13 THE DEFENDANT: Right.

14 THE COURT: Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. I have a sentencing date set  
17 for... November 6th at 10:00 a.m.

18 THE DEFENDANT: What time?

19 THE COURT: 10:00 a.m. on November 6th.

20 THE DEFENDANT: 10:00 a.m., November 6th?

21 THE COURT: Yeah. Does that work for you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. Mr. Tauber?

24 MR. TAUBER: Yeah, that's fine, Judge.

25 THE COURT: Ms. Lunkenheimer?

1 MS. LUNKENHEIMER: Yes, your Honor.

2 THE COURT: I know you're always available, Ms.  
3 Lunkenheimer.

4 (Laughter.)

5 MS. LUNKENHEIMER: Well, I think we both agree that  
6 November is like, well, what could we be doing in November?

7 (Laughter.)

8 THE COURT: Oh, you'll be busy, I'm sure.

9 MS. LUNKENHEIMER: It will fill up fast enough, I  
10 know.

11 THE COURT: Ms. Lunkenheimer is the only lawyer I've  
12 ever had in front of me who whenever I ask her for a date to  
13 do something she always says, I'm always available.

14 (Laughter.)

15 MS. LUNKENHEIMER: I did say -- I did say to your  
16 deputy this time, I'm available but I hope I'm not late  
17 because of kid drop-off this morning.

18 (Laughter.)

19 THE COURT: Well, we can change it if you have --

20 MS. LUNKENHEIMER: No, no, no, we made it on time.

21 THE COURT: -- childcare issues.

22 MS. LUNKENHEIMER: Your Honor, the one thing I just  
23 wanted to say to Mr. Summers. When you talk to Pretrial,  
24 they have -- it sounds to me like they've helped you get into  
25 this clinic and what they may need to understand is that in

1 your view that isn't quite enough for you right now, you need  
2 a little more assistance.

3 THE DEFENDANT: Okay.

4 MS. LUNKENHEIMER: That's what the Judge is --  
5 that's what I talked to you about before we started --

6 THE DEFENDANT: Mm-hmm.

7 MS. LUNKENHEIMER: -- is that we want to make sure  
8 you're getting everything you need.

9 THE DEFENDANT: Right.

10 MS. LUNKENHEIMER: If you feel that it's not enough  
11 because the doctor doesn't have enough time or whatever  
12 reason, please tell them that. We'll tell them that if they  
13 ask, but it will helpful for you to say it's just not enough  
14 and I just -- I need a little more help.

15 THE DEFENDANT: Right, okay.

16 MS. LUNKENHEIMER: So the Judge is going to order  
17 them to do that, but they need to understand why the order is  
18 coming in when -- you know, when you are going to a clinic.  
19 So they need to hear that you need a little more help.

20 MR. TAUBER: I'll give Rockey Reyes a call to  
21 discuss this.

22 THE COURT: Maybe you should even stop over --

23 MR. TAUBER: Yeah, yeah.

24 THE COURT: -- this morning, and I'll call him this  
25 morning and tell him you're coming.

1 MR. TAUBER: Okay.

2 THE COURT: And Rocky is a good guy and he cares  
3 about people, so he'll get you the help you need. You know,  
4 whatever the medical professionals deem it to be, I hope  
5 you'll agree to it and abide by it.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. So you've been doing well on  
8 pretrial release. Probation -- or Pretrial Services gave you  
9 a great report, so you should be very proud of that.

10 THE DEFENDANT: Okay, thank you.

11 THE COURT: All right? So I want you to keep it up  
12 and if you feel like you need help, if you feel like, you  
13 know, the mental health issues that you're experiencing are  
14 getting overwhelming, tell somebody.

15 THE DEFENDANT: Okay.

16 THE COURT: All right? And we'll get you the help  
17 you need.

18 THE DEFENDANT: Okay. Well, who do I contact?

19 THE COURT: You can contact either Mr. Tauber or  
20 contact Rocky.

21 THE DEFENDANT: Okay.

22 THE COURT: Or, if you can't get a hold of them, you  
23 can contact my office or Ms. Lunkenheimer.

24 THE DEFENDANT: Okay.

25 THE COURT: All right? Just reach out for somebody,

1 maybe even your counselor or have your wife get you to the  
2 hospital.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: But we'll get you whatever assistance  
5 you need if you need it.

6 THE DEFENDANT: Mm-hmm.

7 THE COURT: Okay?

8 MR. TAUBER: Judge, I just had a couple questions  
9 about the -- how the Court is -- the protocol for these 3607  
10 motions. I know there's going to be -- there's been a  
11 hearing, there's going to be another hearing, is it the  
12 Court's intention to make a ruling of some sort of -- I'm  
13 just trying to find out how you're going to proceed.

14 THE COURT: Yeah, here's what I'm going to do.  
15 Apparently, right now there's four that are ripe?

16 MS. LUNKENHEIMER: Well, that are ripe -- I mean,  
17 his would now be ripe, but there's --

18 THE COURT: No, I mean there's four that we've --

19 MS. LUNKENHEIMER: I thought there were five, I'm  
20 sorry, there's --

21 THE COURT: Maybe there's five.

22 MS. LUNKENHEIMER: There's Philip Duris --

23 THE COURT: Patterson.

24 MS. LUNKENHEIMER: -- Patterson, Swann, and then  
25 Wilson was -- but he wasn't -- but was there someone else?

1 THE COURT: He's not ready yet, so four.

2 MS. LUNKENHEIMER: You're right, sir.

3 THE COURT: What I'm going to do is, I'm going to --  
4 after the testimony is completed, I'm going to issue a ruling  
5 on those four.

6 MR. TAUBER: I see.

7 THE COURT: And I think that ruling will set out the  
8 parameters and kind of make it -- give everybody kind of a  
9 road map on where we're going for the other cases.

10 MR. TAUBER: Okay, all right, that will be helpful.

11 THE COURT: So I'll make my findings and rule on  
12 whether any of those four folks are eligible. And I think,  
13 once that happens, the rest of it will fall in place and we  
14 can address the other situations at the time of sentencing.  
15 So why don't you file your motion, it just has to be a page  
16 or two.

17 MR. TAUBER: Yeah, that's fine.

18 THE COURT: And if you want to file something longer  
19 like, for example, Mr. Scuderi filed like a five-or-six-page  
20 thing outlining some of the pertinent factors of his client's  
21 situation --

22 MR. TAUBER: Right, right.

23 THE COURT: -- that he wants me to --

24 MR. TAUBER: I would anticipate I'll be probably --  
25 I will file a motion just to get on the docket, because I



1 would expect I'll file some sort of supplemental --

2 THE COURT: Yeah, that's fine.

3 MR. TAUBER: -- filing.

4 MS. LUNKENHEIMER: That's what we had discussed. I  
5 understood he didn't have time to do that --

6 THE COURT: Yes.

7 MS. LUNKENHEIMER: -- and obviously there's some  
8 issues he needs to explore further.

9 THE COURT: Yes, we understand.

10 MS. LUNKENHEIMER: Your Honor, actually just for my  
11 own clarification, it's helpful to me because we were going  
12 to ask the Court, we were not then going to put in a  
13 supplemental personal section about the new people who have  
14 kind of become ripe, in the meantime we were focusing on the  
15 four --

16 THE COURT: We'll deal with those at the time of  
17 sentencing.

18 MS. LUNKENHEIMER: Okay, that's -- we just didn't  
19 want to have to supplement our motion at this point, we  
20 wanted to focus on the witnesses we were going to present for  
21 the general issue. Okay.

22 THE COURT: Yeah, whoever -- like tomorrow, whoever  
23 is going to be there that you're going to be presenting  
24 testimony on --

25 MS. LUNKENHEIMER: It's not going to be cooperators

1 who sold to the new individuals who have become ripe, we were  
2 going to do just what we told you before --

3 THE COURT: Just those four?

4 MS. LUNKENHEIMER: Yes.

5 THE COURT: Okay.

6 MS. LUNKENHEIMER: Thank you.

7 THE COURT: All right.

8 MR. TAUBER: So the Court will be issuing some sort  
9 of a written ruling on these initial ones and I can find  
10 guidance during that, I assume.

11 THE COURT: Yeah, I think everybody will get  
12 guidance from however I rule on that --

13 MR. TAUBER: All right.

14 THE COURT: -- and we can kind of deal with the  
15 other cases on an individual basis as sentencing comes up.

16 MR. TAUBER: Okay.

17 THE COURT: If you want a ruling before sentencing  
18 day, I'll be happy to do that.

19 All right. Thanks, everybody, for your patience.

20 MS. LUNKENHEIMER: Thank you, your Honor.

21 MR. TAUBER: Thank you.

22 THE COURT: Mr. Summers, good luck to you, I hope  
23 things work out.

24 THE DEFENDANT: Thank you, Judge, I appreciate it.

25 THE COURT: Okay.

1 THE DEFENDANT: Thank you.

2 THE COURT: All right. Mr. Tauber, nice to see you.

3 MR. TAUBER: Thank you, Judge.

4 THE COURT: Ms. Lunkenheimer.

5 MS. LUNKENHEIMER: Thank you, your Honor.

6 (Hearing adjourned at 9:33 o'clock a.m.)

7 \* \* \*

CERTIFICATION

I hereby certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

s:/Geraldine C. Laws, CET  
Laws Transcription Service

Dated 10/3/12